

It is undoubtedly true, that according to the reasoning of some of the cases, a portion of this machinery might be regarded as fixtures, and consequently as becoming part of the realty, but no case has been produced, and it is thought none can be found, in which machinery used for carrying on the kind of manufacture which was carried on in this mill, has been *adjudged* to be real estate, although in several of them the mode of putting it up and securing its uniform and steady operation, has been in every essential particular precisely like the present.

In the case of *Walker vs. Sherman*, 20 *Wendell*, 636, the question arose upon the report of commissioners in partition between tenants in common, and it was decided that machinery used in a woollen factory, which had passed with the estate from one owner to another for a series of years, was no part of the realty. The case was decided after an examination of many of the English and American authorities. It was treated on the same principle as if it had arisen between grantor and grantee, when the doctrine of fixtures making a part of the freehold and passing with it, is applied much more extensively than between some others.

There can be no doubt that the Judge by whom the opinion in *Walker vs. Sherman* was pronounced, was disposed rather to relax the principle to be gathered from some of the preceding cases, than to render it more stringent. He was evidently indisposed to carry the principle of constructive fixtures as far as it had gone in the cases he was commenting on, and although it may be inferred from some expressions to be found in his opinion, that mere physical annexation, though slight, and causing by the separation but little injury to the freehold, would give to the thing so annexed the character of a fixture, I am persuaded that, looking to the whole opinion, he did not so intend to be understood. On page 639, he complains of the severity of the law, and says, that to constitute a fixture, the machinery "must not only be essential to the business of the erection, but it must be attached to it in some way; at least it must be mechanically fitted, so as in ordinary